

## AMENDING THE DISTRICT OF COLUMBIA ELECTION LAW

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SEPTEMBER 23, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. McMILLAN, from the Committee on the District of Columbia, submitted the following

### REPORT

[To accompany H.R. 10784]

The Committee on the District of Columbia, to whom was referred the bill (H.R. 10784) to amend the District of Columbia Election Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, strike out lines 7 through 10, and insert in lieu thereof the following:

(A) Clause (A) is amended by striking out "one-year period" and inserting in lieu thereof "six-month period" and by inserting at the end thereof immediately before the semicolon ", except in the case of an election of electors of President and Vice President of the United States the period shall be thirty days".

(B) Clause (B) is amended by striking out "twenty-one" and inserting in lieu thereof "eighteen".

### PURPOSE OF THE BILL

The purpose of this bill, as amended, is to amend the D.C. Election Act (Act of August 12, 1955 (69 Stat. 699) as amended, D.C. Code, sec. 1-1100 et seq.) in three respects, as follows:

1. Change the minimum period of residence, required to qualify a voter, from one year to 30 days in the case of election of electors for President and Vice President, and from one year to six months for the election of Delegate from the District to the Congress, election of delegates to the national nominating conventions for President and Vice President, and for the election of members of the Board of Education;

2.) Change from 21 years to 18 years the minimum age required for qualification to vote in the District of Columbia; and

3.) Change the date for a run-off election in connection with elections for the D.C. Board of Education from the twenty-first day after the general election for the Board of Education to the twenty-eighth day following such general election.

## PROVISIONS OF THE BILL

### 1. *Residence requirement for voter eligibility*

Under existing law (D.C. Code, sec. 1-1102), order to be a qualified elector \* \* \* that is, to be qualified to register and vote \* \* \* in any election in the District of Columbia, a person must have resided in the District continuously since the beginning of the one-year period ending on the day of such election.

Paragraph (1)(a) of section 1 of H.R. 10784 amends this provision by reducing this period of residency to six months except in the case of election of electors for President and Vice President, in which case the requirement is 30 days.

In November of 1970, however, in the case of *Lester v. Board of Elections*, a three-judge Federal Court in the District of Columbia struck down as unconstitutional the one-year residency requirement in the case of elections for the District of Columbia's Delegate to the House of Representatives. This case was, by its terms, applicable only to the election of such Delegate to the House of Representatives. As a matter of fact, no Board of Education elections were scheduled in the District for November of that year, for which reason the plaintiffs in that suit would not have been in a position to challenge the one-year residency requirement for school board elections.

The *Lester* case was decided in November of 1970, and hence was applicable to the initial party primary elections for D.C. Delegate in January, 1971, and to the initial general election for Delegate held in March, 1971. As a result, a number of people registered and voted in these elections who had lived in the District of Columbia less than a year prior to one or both of these elections. It follows that many such people will also not have lived in the District for a full year by November of this year, at which time the District will hold regularly scheduled elections of members of the D.C. Board of Education. It is obvious, therefore, that unless the 1955 statutory residency requirement of one year is changed prior to November of this year, the D.C. Board of Elections will be obliged to forbid voting in the Board of Education election of 1971 by all registered voters who have lived in the District for less than a full year at that time \* \* \* including those who nevertheless voted validly in January and March of 1971 in the elections for Delegate to the House of Representatives.

A possibly even more confusing residency problem will arise in connection with the party elections to be held on May 2, 1972. On that day, there will be two different closed party elections. One will be a party primary election to choose party candidates for Delegate to the House of Representatives \* \* \* to which the one-year residency requirement is inapplicable by reason of the *Lester* decision. And the other will be closed party elections for candidates for Delegate to the Presidential Nominating Conventions, for National Committeemen and National Committeewomen, as well as voting on the so-called

party questions. The statutory one-year residency requirement will of course apply to voters in this second group of elections, unless the requirement is changed by legislation.

### FEDERAL RESIDENCY REQUIREMENTS

In considering the legislation which resulted in the enactment of the "Voting Rights Amendments Act of 1970," the 91st Congress concluded and wrote into law (P.L. 91-285; 84 Stat. 314) additional guide-lines for voting, among which were provisions relating to the residency requirements for qualifying to register and vote for President and Vice President. The Congress found that long periods of residency as a requisite to the exercise of the right to vote in Federal elections were in derogation of the exercise of a constitutional right. The Act established thirty days as the maximum period of residency which might be required as a qualification for registration and voting in elections for President and Vice President.

### STATE RESIDENCY REQUIREMENTS

As a matter of fact, during recent years the minimum residency requirements for voting have been reduced in many jurisdictions throughout the country, in some cases by legislative action and in others by court actions. The following is a listing of the state, county, and voting precinct residency requirements for voting in all fifty states, as of March 1970.

#### STATE RESIDENCY REQUIREMENTS FOR VOTING

State	State requirement	County	Voting precinct
Alabama	1 year	6 months	3 months.
Alaska	do		30 days (election district).
Arizona	do	30 days	30 days.
Arkansas	do	6 months	Do.
California	do	90 days	54 days.
Colorado	do	do	20 days.
Connecticut	Resident of town 6 months.		
Delaware	1 year	3 months	30 days.
Florida	do	6 months	
Georgia	do	do	
Hawaii	do	Representative district, 3 months.	
Idaho	6 months	30 days	30 days.
Illinois	1 year	90 days (township)	30 days (election district).
Indiana	6 months	60 days	30 days.
Iowa	do	do	10 days.
Kansas	do		30 days.
Kentucky	1 year	6 months (parish)	60 days.
Louisiana	do	6 months (municipal elect)	3 months. 4 months.
Maine	6 months	3 months (municipality)	
Maryland	1 year	6 months (city or town)	
Massachusetts	do	6 months	
Michigan	6 months		
Minnesota	do		30 days.
Mississippi	1 year	1 year	6 months (election district).
Missouri	do	60 days	60 days.
Montana	do	30 days	
Nebraska	6 months	40 days	10 days.
Nevada	do	30 days	Do.
New Hampshire			6 months.
New Jersey	6 months	40 days	
New Mexico	1 year	90 days	30 days.
New York	3 months	3 months	
North Carolina	1 year		Do.
North Dakota	do	90 days	Do.
Ohio	do	40 days	40 days.

## STATE RESIDENCY REQUIREMENTS FOR VOTING—Continued

State	State requirement	County	Voting precinct
Oklahoma.....	6 months.....	2 months.....	20 days.
Oregon.....	do.....	.....	.....
Pennsylvania.....	90 days.....	.....	60 days.
Rhode Island.....	1 year.....	6 months <sup>1</sup> (town or city).....	.....
South Carolina.....	do.....	6 months.....	3 months.
South Dakota.....	do.....	90 days.....	30 days.
Tennessee.....	do.....	3 months.....	.....
Texas.....	do.....	6 months.....	.....
Utah.....	do.....	4 months.....	60 days.
Vermont.....	do.....	90 days (town).....	.....
Virginia <sup>1</sup> .....	do.....	6 months.....	30 days.
Washington.....	do.....	90 days.....	Do.
West Virginia.....	do.....	60 days.....	.....
Wisconsin.....	6 months.....	.....	10 days.
Wyoming.....	1 year.....	60 days.....	Do.

<sup>1</sup> Residency requirement has been changed.

Source: Voting Information 1970, Armed Services Information Service, Department of Defense, published March 1970.

It will be noted that at that time, 22 states required one year of residence as a qualification to vote; 15 others required six months; and only two states \* \* \* New York and Pennsylvania \* \* \* required as little as three months.

These are the latest complete figures available to your Committee, and some changes have occurred in some of the states' requirements since that time. As noted, for example, the requirement in Virginia has been changed, and is now six months of residence in the state and 30 days in the county and in the voting precinct.

Having reviewed the legislative developments in the states, the actions of the courts in the principal cases, and the most recent legislation by the Congress, your committee recommends changes in law to conform the District laws on residence duration for eligibility to register and vote to 30 days for the election of electors for the offices of President and Vice President and to 6 months in the case of all other elections in the District of Columbia, for Delegate to Congress, Board of Education, delegate to national nominating conventions for President and Vice President and for other local issues.

Your Committee finds no conflict between these provisions and any court decisions. In *Lester v. Board of Elections* (319 F. supp. 505; 1970), the court found that the local requirement of one year of residence to be unconstitutional but did not indicate what term of residence may be reasonable. Not only did the decision leave the duration of residence to further determination, the case did not specifically apply to the local elections other than for Delegate to Congress. Your committee, in the bill as amended, makes legislative expression relating to local matters to establish a six months residence as a requisite to registration and voting.

## 2. Minimum age requirement for voter eligibility

Paragraph (1)(b) of section 1 of H.R. 10784 changes the minimum age for voter qualification in the existing D.C. Election Act (D.C. Code, sec. 1-1102(2)(b)) from 21 years to 18 years of age.

The 26th Amendment to the U.S. Constitution, which was implemented by S.J. Res. 7 of the 92nd Congress, ratified promptly by the requisite 38 states, and certified on July 5, 1971, provides that any U.S. citizen who is otherwise qualified may vote in any state or poli-



tical subdivision in any election if he is at least 18 years of age. Hence, the provision referred to above in the 1955 D.C. law is no longer valid, and the change made by this provision of H.R. 10784 is merely a matter of conforming the D.C. Election Act to the 26th Amendment to the Constitution.

### 3. *Time for runoff elections for members of the Board of Education.*

Present law (D.C. Code, sec. 1-1110(a)(7)(A)) provides that in a general election for members of the D.C. Board of Education, if no candidate receives a majority of the votes cast for the office for which he is a candidate, a runoff election shall be held on the twenty-first day next following such general election.

Paragraph (2) of section 1 of H.R. 10784 changes the date for such a runoff election to the twenty-eighth day following such general election.

Your Committee is advised that the D.C. Board of Elections has found the present requirement of only 21 days between the general election for the Board of Education and the runoff election ensuing therefrom to be too short for the proper preparations for such a runoff election. In the first place, any candidate in such a general election may petition the Board of Elections for a recount of the vote at any time within 7 days after the Board has certified the results of the election, or he may petition the U.S. District Court for the District of Columbia within that same period of time to review such election. In view of the fact that it normally takes several days after the election for the Board of Elections to certify the results in the first place, it is obvious that if such a petition is made for a recount or for a review by the U.S. Court, a considerable portion of this 21 day period between the general election and the runoff will have elapsed before it is clear whether or not there must be a runoff election at all, and if so, what candidates will be eligible to participate as candidates in such a runoff.

For these same reasons, it appears also that the present 21 day period is not sufficiently long to enable the candidates for the runoff election to engage adequately in their campaigns for such runoff.

S. 2495 amends this time for runoff School Board elections by providing that such runoff elections shall be held "not less than two weeks nor more than six weeks after the date on which the Board has determined the results of the preceding general election". This conforms to the provision in Public Law 91-405 (84 Stat. 851), with reference to runoff elections in connection with election of District of Columbia Delegate to the House of Representatives.

It is the opinion of your Committee, however, that it will be much more satisfactory to establish a set date for runoff elections for Board of Education candidates, rather than a period of time within which the Board of Elections may conduct such a runoff election. In the first place, there is the possibility that under the provision in S. 2495, one candidate may deem it to his advantage to have the runoff election at the earliest possible date, while the other may desire a longer time within which to campaign. In this case, the Board of Elections would be vulnerable to charges of favoritism in setting the actual date for the runoff election. Also, it will obviously be advantageous for the candidates and for the Board alike to be able to anticipate the actual date for such a runoff election, to facilitate

their planning and preparations for such a runoff. For these reasons, your Committee deems the 28 day period between the general election and the runoff election, as provided in H.R. 10784, to be both adequate and practical.

#### CONCLUSIONS

Your Committee is strongly of the opinion that the provisions of this bill, which will amend and update the D.C. Election Act of 1955, as amended, in several important respects, are timely and very much in the public interest. The revision of the residency requirement for voter eligibility in all D.C. elections must be accomplished at this time, in order to avoid the conflicts and confusion which otherwise will prevail in the elections in 1972; and the important election of members to the D.C. Board of Education to be held in November of this year makes it imperative that early action be taken to provide the benefits of the extended time lapse between the general election and a possible runoff which H.R. 10784 will assure. For these reasons, your Committee urges prompt and favorable action on this bill.

#### HEARING

A public hearing on these and other proposed amendments to the D.C. Election Act was held on September 13, 1971. At this time, testimony was received from members of Congress and from spokesmen for the District of Columbia government, the D.C. Board of Elections, the D.C. League of Women Voters, the D.C. Republican Committee, the D.C. Democratic Central Committee, as well as from private citizens.

#### COST

The enactment of this proposed legislation will involve no added cost to the government of the District of Columbia.

#### COMMITTEE AMENDMENT

H.R. 10784, as introduced, amended existing law by striking the one year residency requirement for eligibility to register and vote in the District and substituting a "six-month period" for all elections.

As reported with amendment, this change is deleted and new provisions inserted to provide for a maximum residency duration of 30 days for eligibility to register and vote in elections for electors for President and Vice President. For elections to other offices and for other issues, local in character, the minimum period would be six months. This is in contrast to the provisions of the bill S. 2495 which set the maximum residence duration at 30 days.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

## DISTRICT OF COLUMBIA ELECTION ACT

\* \* \* \* \*

## DEFINITIONS

SEC. 2. For the purposes of this Act—

(1) The term "District" means the District of Columbia.

(2) The term "qualified elector" means a citizen of the United States (A) who does not claim voting residence or right to vote in any State or Territory; and who, for the purpose of voting in an election under this Act, has resided or has been domiciled in the District continuously since the beginning of the **[one-year]** *six-month* period ending on the day of such election, *except in the case of an election of electors of President and Vice President of the United States the period shall be thirty days*; (B) who is, or will be on the day of the next election, **[twenty-one]** *eighteen* years old; (C) who has never been convicted of a felony in the United States, or if he has been so convicted, has been pardoned; and (D) who is not mentally incompetent as adjudged by a court of competent jurisdiction.

(3) The term "Board" means the Board of Elections for the District of Columbia provided for by section 3.

(4) The term "ward" means a school election ward established by the Board under section 5(a)(4) of this Act.

(5) The term "Board of Education" means the Board of Education of the District.

(6) The term "Delegate" means the Delegate to the House of Representatives from the District of Columbia.

\* \* \* \* \*

## ELECTIONS

SEC. 10. (a) (1) The elections of the officials referred to in clauses (1) and (2), of the first section and of officials designated pursuant to clause (3) of such section shall be held on the first Tuesday in May of each presidential election year.

\* \* \* \* \*

(6) The first general election for members of the Board of Education shall be held on November 5, 1968, and thereafter on the Tuesday next after the first Monday in November of each odd-numbered calendar year.

(7)(A) If in a general election for members of the Board of Education no candidate for the office of member from a ward, or no candidate for the office of member elected at large (where only one at-large position is being filled at such election), receives a majority of the votes validly cast for such office, a runoff election shall be held on the **[twenty-first]** *twenty-eighth* day next following such election. The candidate receiving the highest number of votes in such runoff election shall be declared elected.

(B) When more than one office of member elected at large is being filled at such a general election, the candidates for such offices who receive the highest number of votes shall be declared elected, except that no candidate shall be declared elected who does not receive a

majority of the number of all votes cast for candidates for election at large in such election divided by the number of at-large offices to be filled in such election. Where one or more of the at-large positions remains unfilled, a runoff election shall be held as provided in subparagraph (A) of this paragraph, and the candidate or candidates receiving the highest number of votes in such runoff election shall be declared elected.

(C) Where a vacancy in an unexpired term for an at-large position is being filled at the same general election as one or more full term at-large positions, the successful candidate or candidates with the highest number of votes in the general election, or in the runoff election if a runoff election is necessary, shall be declared elected to the full term position or positions, provided that any candidate declared elected at the general election shall for this purpose be deemed to have received a higher number of votes than any candidate elected in the runoff election.

(D) The Board may resolve any tie vote occurring in an election governed by this paragraph by requiring the candidates receiving the tie vote to cast lots at such time and in such manner as the Board may prescribe.

\* \* \* \* \*

